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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Implementation of Sections 3(n)	)	
and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of	)	
Mobile Services	)	

REPLY COMMENTS OF MOTOROLA INC.

Motorola Inc. ("Motorola") hereby submits these reply comments in response to the Second Further Notice of Proposed Rule Making adopted in the above-captioned docket on July 18, 1994. Almost unanimously, the opening commenters agree that the inclusion of non-equity arrangements such as management agreements, resale agreements, and joint marketing agreements as attributable interests for purposes of applying the 40 MHz limit on the accumulation of PCS spectrum, the PCS-cellular cross-ownership rules, or the more general commercial mobile radio service ("CMRS") spectrum aggregation cap is unnecessary and would be contrary to the public interest. In view of the overwhelming opposition in the record, Motorola urges the Commission not to proceed with its proposals in this regard.

Respectfully Submitted By:

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I. THE RECORD REFLECTS OVERWHELMING OPPOSITION TO THE ADOPTION OF RULES AND POLICIES THAT WOULD TREAT NON-EQUITY ARRANGEMENTS AS ATTRIBUTABLE INTERESTS

In the Second Further Notice of Proposed Rule Making recently adopted in the above-captioned docket,[1] the Commission asked commenters to discuss whether certain non-equity arrangements -- such as management agreements, resale agreements, and joint marketing agreements -- give rise to the potential for anticompetitive conduct that could affect the incentive or ability of CMRS licensees to compete. To address such a possibility, the Commission solicited commenters' views as to whether these types of arrangements should be treated as attributable interests for purposes of applying the 40 MHz limit on the accumulation of PCS spectrum, the PCS-cellular cross-ownership rules, or the more general CMRS spectrum aggregation limit.[2]

As discussed in detail in its opening comments, Motorola urges the Commission not to adopt rules or policies that would treat management agreements, resale agreements, or joint marketing agreements as attributable interests for purposes of applying any of the spectrum aggregation limits discussed in the *Second Further Notice*.[3] In brief, contrary to the Commission's objectives, treating these types of arrangements as attributable interests would actually be likely to decrease both the level

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[1] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, FCC 94-191 (July 20, 1994) [hereinafter Second Further Notice].

[2] Second Further Notice ¶ 5.

[3] Comments of Motorola Inc., GN Docket No. 93-252 (filed Aug. 9, 1994).

of competition in the CMRS marketplace and the extent of diversity among CMRS providers.[4] In addition, because sufficient legal mechanisms such as antitrust laws and regulations governing fiduciary duties exist to protect against the potential anticompetitive conduct identified in the *Second Further Notice*, it is neither necessary nor appropriate to use attribution limits and spectrum caps as a means for deterring such behavior.[5] Finally, the Commission's rules already prohibit parties (such as a manager, reseller, or other joint marketing participant) to such arrangements from exercising control over the licensee.[6]

Almost unanimously, the commenting parties share these views.[7] Only one

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[4] *Id.* at 5-8.

[5] *Id.* at 6.

[6] *Id.* at 5-6.

[7] *See, e.g.*, Comments of American Mobile Satellite Corporation, GN Docket No. 93-252, at 1-2 (filed Aug. 9, 1994) (non-equity arrangements entered into by Mobile Satellite Service providers should not be treated as attributable); Comments of Cellular Service, Inc., GN Docket No. 93-252, at 2 (filed Aug. 9, 1994) (cellular resale should not be treated as attributable); Comments of The Cellular Telecommunications Industry Association, GN Docket No. 93-252, at 3 (filed Aug. 9, 1994) (strongly urges the Commission not to treat management agreements, resale agreements, joint marketing agreements, or similar arrangements as attributable interests for purposes of applying any of the identified spectrum aggregation limits); Comments of GTE Service Corporation, GN Docket No. 93-252, at 5-10 (filed Aug. 9, 1994) (same); Comments of LCC, L.L.C., GN Docket No. 93-252, at 4 (filed Aug. 9, 1994) (same); Comments of McCaw Cellular Communications, Inc., GN Docket No. 93-252, at 3-5 (filed Aug. 9, 1994) (same); Comments of the National Cellular Resellers Association, GN Docket No. 93-252, at 3-5 (filed Aug. 9, 1994) (opposes attribution of resale agreements); Comments of Nextel Communications, Inc., GN Docket No. 93-252, at 1 (filed Aug. 9, 1994) (opposes attribution of non-equity interests for purposes of measuring the cumulative spectrum acquired by any entity); Comments of NYNEX Corporation, GN

(continued...)

commenter, Columbia PCS, Inc. ("Columbia PCS"), supports treating non-equity arrangements as attributable interests for purposes of applying spectrum caps.[8] Motorola submits that, in view of the overwhelming weight of the comments, the Commission should abandon any proposal to include management agreements, resale agreements, joint marketing agreements, or similar arrangements as attributable interests for spectrum cap purposes.

II. THE COMMISSION SHOULD NOT REDEFINE THE SCOPE OF PERMISSIBLE MANAGEMENT AGREEMENTS IN THIS PHASE OF THE PROCEEDING

In its comments, Columbia PCS urges the Commission to define more narrowly the circumstances in which management agreements are allowed. Specifically,

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[7](...continued)
Docket No. 93-252, at 2 (filed Aug. 9, 1994) (same); Comments of Pacific Bell Mobile Services, GN Docket No. 93-252, at 2-8 (filed Aug. 9, 1994) (same); Comments of PCC Management Corp., GN Docket No. 93-252, at 2 (filed Aug. 9, 1994) (management agreements); Comments of PlusCom, Inc., GN Docket No. 93-252, at 1 (filed Aug. 9, 1994) (the class of attributable non-equity interests should not be expanded to include designated entities); Comments of The Rural Cellular Association, GN Docket No. 93-252, at 5 (filed Aug. 9, 1994) (opposes the adoption of attribution rules for entities that have non-equity relationships with licensees); Comments of Simron, Inc., GN Docket No. 93-252, at 4-5 (filed Aug. 9, 1994) (bona fide management agreements should not be treated as attributable); Comments of Southwestern Bell Corporation, GN Docket No. 93-252, at 6 (filed Aug. 9, 1994) (management agreements and joint marketing agreements should not be treated as attributable); Comments of Vanguard Cellular Systems, Inc., GN Docket No. 93-252, at 2-6 (filed Aug. 9, 1994) (joint marketing arrangements should not be treated as attributable).

[8] Comments of Columbia PCS, Inc., GN Docket No. 93-252 (filed Aug. 9, 1994).

Columbia PCS suggests that only subcontractor-type management agreements, i.e., those that are for a specific function such as construction, should be permitted.[9] Columbia PCS recommends that a broad-based management agreement should be disallowed as an improper transfer of *de facto* control.[10] In addition, Columbia PCS suggests that, while subcontracting-type management arrangements should be permissible, they should be treated as attributable interests for purposes of the PCS spectrum aggregation limit and the PCS-cellular cross-ownership rules.[11]

Significantly, Columbia PCS's suggestion in response to the Second Further Notice that the Commission redefine its management agreement rules and policies contains no justification for such a dramatic departure from established Commission precedent. Moreover, the *Second Further Notice* sought comment on the possible attribution of certain types of non-equity interests under the PCS spectrum aggregation limit, the PCS-cellular cross-ownership rules, or the more general CMRS spectrum aggregation cap. The Commission did not seek comment concerning the possible refinement of its existing policies governing the range of permissible management agreements, and no other commenter urged the Commission to narrow the range of permissible management agreements. Columbia PCS's suggestion that the Commission limit the expanse of permissible management agreements accordingly is outside the

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[9] *Id.* at 3-4.

[10] *Id.*

[11] *Id.* at 4.

scope of this proceeding. An issue of such importance to the CMRS industry, and one that would alter years of existing precedent, should be decided only after the development of a full and complete record. Because this is not the case here, Columbia PCS's suggestion should be rejected forthwith.

III. CONCLUSION

In summary, almost unanimously, the commenters agree that the adoption of rules treating management agreements, resale agreements, or joint marketing as attributable interests for the purpose of applying spectrum aggregation limits is unnecessary and would be contrary to the public interest. Motorola shares this view, and urges the Commission not to adopt rules that treat non-equity arrangements such as management agreements, resale agreements, or joint marketing agreements as attributable interests for purposes of applying any spectrum aggregation cap or ownership limit. In addition, Columbia PCS's suggestion that the Commission more narrowly define the scope of permissible management agreements should be rejected out of hand.

Respectfully submitted,

Motorola Inc.

CERTIFICATE OF SERVICE

I hereby certify that courtesy copies of the attached "Reply Comments of Motorola Inc." have been served via hand delivery on the following persons on this 19th day of August, 1994:

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